

1 sided documents and information that the
2 plaintiffs or complainants want to present in
3 their direct cases. And we're entitled to
4 more than that.

5 MS. MONTEITH: I don't think
6 that's what we're talking about here, though.
7 I don't think that's what we're talking about
8 here.

9 JUDGE SIPPEL: Yes. I hear what
10 exactly Ms. Monteith is saying, and I think
11 that we -- I believe, also, that Ms. Wallman
12 is in a different -- a little bit of a
13 different category, if I'm understanding this
14 correctly. Her case is going to be broken out
15 from the others, that don't have to involve
16 everybody, every part in this proceeding.

17 MR. COHEN: But it involves four
18 of the defendants, Your Honor, so a fair
19 amount of coordination. All of the defendants
20 are in that case. We are not -- this is not
21 a case that's frozen in stone. Ms. Wallman
22 submitted supplemental evidence three weeks

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1 ago. She came up with a new expert last week,
2 if I heard her correctly today. She's maybe
3 not at the end of her experts, so all we're
4 talking about is starting the hearing April 1,
5 working backwards. I don't think January 31st
6 makes any sense for discovery because of the
7 holidays. It could be some time in February,
8 could be the end of February. And what is the
9 rush at this point, as opposed to getting it
10 right?

11 MR. FREDERICK: Your Honor -

12 MR. COHEN: Let me finish. We did
13 not come in with a schedule that said we want
14 to do everything in the world. We want a
15 delay. We've agreed to forego fact
16 depositions. We've agreed to forego
17 interrogatories. We want to get the right
18 evidence, and prepare it in a way that we can
19 have an efficient hearing. We're perfectly
20 happy to talk about the length of the hearing.
21 We don't think it should go on forever. And
22 if we do our pretrial work efficiently, the

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1 trial will be efficient.

2 MR. FREDERICK: Your Honor, for
3 MASN we do stand in a different position for
4 a couple of reasons. There's only one
5 defendant in our case. The issues are very
6 well framed. We've already been through one
7 complaint proceeding against Comcast, where
8 very similar issues were fleshed out by the
9 parties. We've got a situation now where the
10 baseball season is going to begin the
11 beginning of April. We have every interest in
12 having a decision by the Commission done so
13 that people are not going to be denied a fifth
14 baseball season by virtue of Comcast's
15 discriminatory treatment of MASN in the Mid-
16 Atlantic region.

17 We don't see any reason why we
18 have to be the tail on the case, on the four
19 defendant cases. We'd like to go sooner than
20 whatever you decide for WealthTV, and we're
21 prepared to expedite our process so that that
22 can happen.

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1 JUDGE SIPPEL: Well, what kind of
2 - when do you want to start presenting your
3 case?

4 MR. FREDERICK: We'd like to start
5 by early February.

6 MR. SOLOMON: Your Honor, we're
7 the defendant in three cases, so -

8 JUDGE SIPPEL: Yes, sir.

9 MR. SOLOMON: I think, and we've
10 assumed that the order that would be followed
11 is simply the order in the caption. And that
12 there has to be some ordering of the cases so
13 that Comcast defendants -- remember, these are
14 all separate complaints filed at separate
15 times. And maybe I'm adding too much
16 cynicism, and I realize expedition is
17 important, but the fact that one of the six
18 complaints has been pending for 11 months
19 isn't the longest thing that's ever happened
20 in the FCC. And I agree with expedition, but
21 the fact is they were just designated for
22 hearing. Your colleague has indicated that

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1 due process requires a hearing. Whatever
2 happened that made it take that, take a period
3 of time in the Media Bureau, we agree that
4 this case should move at a good reasonable
5 pace. But it's not an outrageous pace to say
6 that with a pre-hearing conference in late
7 November, that the hearing would begin, at
8 least for the first hearing, that the hearing
9 would begin, which I think all the WealthTV
10 defendants are roughly saying that it could
11 begin around April 1st.

12 MS. WALLMAN: Your Honor -

13 MR. LEVY: Your Honor, there's one
14 additional point that bears mentioning.

15 JUDGE SIPPEL: Let me hear from
16 Ms. Wallman first.

17 MS. WALLMAN: Your Honor, it is
18 the longest thing that's ever happened to my
19 client with the FCC. And I expect that there
20 will be a fair amount of coordination among
21 the defendants as to discovery. And we urge
22 Your Honor to adhere to the schedule that's

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1 been proposed by Mr. Levy, whether you do that
2 in series or in parallel.

3 MR. LEVY: The problem here, Your
4 Honor, is that this isn't the end of the
5 process. I mean, recognize we have to have
6 a hearing, you're going to prepare -- there's
7 going to have to be post-hearing briefing.
8 You're going to have to prepare a recommended
9 decision. Then it goes to the Commission. By
10 the time we get relief in this matter, not
11 only another baseball season, but another
12 football season may pass by, as well. And the
13 only way to get this process moving is to
14 start it earlier. The parties are prepared to
15 move expeditiously.

16 And as I said before, if we can't
17 satisfy our burden expeditiously, then we know
18 what the consequences are going to be. But we
19 are confident that we can persuade Your Honor,
20 put in a preponderance of the evidence, make
21 our witnesses available for cross examination
22 at an early hearing, and ultimately prevail.

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1 We would like to see that process begin at the
2 beginning of February, not at the beginning of
3 April or May, because the tail is many months
4 beyond that.

5 JUDGE SIPPEL: Well, certainly,
6 I'm very confident in setting it down for on
7 or about April 1st, whatever the first Monday
8 of that week is. And I can go from there.
9 If, in the meantime, you can -- no, I'm not
10 going to say about in the meantime. That's
11 going to be the date to get to go to hearing
12 on this case. All right?

13 The discovery has got to be
14 completed that means by no later than the end
15 of March. And there's going to be trial
16 briefs. I'll set all this out. And in light
17 of the fact that there is some sworn
18 testimony, and some not sworn testimony, I'm
19 going to require some rather detailed
20 summaries of what the witnesses are going to
21 testify to, so nobody gets taken by surprise.
22 If anybody gets taken by surprise, I will be

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1 very upset, and I don't see how you -- I don't
2 have to tell you this, but you're going to end
3 up hurting your case more than you are helping
4 it. But, as I say, I'm not worried about that
5 happening. Mr. Schonman.

6 MR. SCHONMAN: Your Honor, at the
7 risk of beating a dead horse, the Bureau would
8 strongly urge you to move that schedule up.
9 April 1st seems like a very long period of
10 time between now and then to engage in
11 discovery, and get exhibits together, and
12 prepare for hearing. If Your Honor wanted to
13 start March 1st, perhaps -

14 JUDGE SIPPEL: That would be okay
15 with you.

16 MR. SCHONMAN: We would prefer
17 something earlier, but I'm not sure that -- I
18 don't think you're ever going to get any
19 agreement from everybody here.

20 MR. MILLS: That would not be the
21 choice of the defendants at all.

22 MR. COHEN: With all due respect,

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1 Your Honor, the burden is not on the Bureau
2 with respect to the preparation and the
3 hearing. I mean, we have all of the
4 affirmative witnesses to bring forward, and we
5 have to carry on cross examination, and do all
6 the discovery.

7 MR. MILLS: Frankly, I understand

8
9 MR. SCHONMAN: Well, if the Bureau
10 doesn't have the burdens, but the Bureau
11 certainly has an interest in seeing this case
12 go forward expeditiously.

13 MR. COHEN: Of course, and the
14 question is, is it a matter of policy is 30
15 days really the point at which you could say
16 that our proposal, and the proposal starting
17 on April 1 doesn't carry that out. I don't
18 think a principal argument could be made with
19 respect that that 30 days is the dividing line
20 between expedition and non-expedition. Nobody
21 is talking about a long schedule. We've
22 already come forward and cut everything back,

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1 so we would urge Your Honor adhere to the
2 April 1, and we'll work expeditiously and in
3 an orderly way to get it done, with a trial
4 date in mind. I think that will help us sit
5 down with some of the Wealth side and figure
6 out a rational schedule in the interim so we
7 don't have to burden the Court with a lot of
8 interim steps. We're grownups, we'll work out
9 our disputes, and we'll show up on April 1st
10 ready to try the case, and there won't be any
11 surprises.

12 JUDGE SIPPEL: Why is a matter of
13 weeks so important to you? That's what I'm -
14 maybe there's something here that I'm
15 missing.

16 MR. SCHONMAN: Well, we've been
17 going weeks after weeks, and what we end up
18 doing is moving the whole case forward months
19 then. But what we're trying to do is nail
20 down, number one, how long should discovery
21 be. I think there's some agreement, I think,
22 that there will be some level of discovery

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1 here, so how long should that be?

2 All right. We've got the entire
3 month of December, and perhaps the entire
4 month of January.

5 JUDGE SIPPEL: You don't have the
6 entire month. You know that. I mean, there's
7 holiday season.

8 MR. SCHONMAN: It could go up to
9 the first week in February then. Then if you
10 have three weeks in-between the end of
11 discovery and the beginning of the hearing in
12 March, that is moving along. The parties are
13 getting all the process to which they are due.
14 They're able to finish out their cases and
15 move the case along. We don't have the
16 luxury, I think, of doing a - I don't want to
17 say a full-blown hearing. We're going to have
18 a full-blown hearing here, but it's going to
19 be on a very concise schedule.

20 JUDGE SIPPEL: I wouldn't call it
21 a full-blown -

22 MS. MONTEITH: These are not new

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1 issues for the parties.

2 JUDGE SIPPEL: I understand that,
3 ma'am.

4 MS. MONTEITH: These issues have
5 been before these same parties for some period
6 of time here, and I truly believe, with all
7 due respect, that the defendants know what
8 discovery they need or want. They've had
9 ample time to think that through, and in the
10 interest of the Commission, the Media Bureau,
11 the Enforcement Bureau, we ought to move this
12 case along as quickly as possible.

13 JUDGE SIPPEL: Well, I'm trying to
14 do that.

15 MS. MONTEITH: They're not coming
16 to these issues for the first time on October
17 10th with the Hearing Designation Order, and
18 the Media Bureau's decision. They've been
19 living these issues for a fairly lengthy
20 period of time. We ought to move it along.

21 JUDGE SIPPEL: Well, it's
22 litigating the issues. I understand

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1 everything that you're saying, but it's the
2 litigation of the issues under the APA, that's
3 the thing that I have to wrestle with. I'm
4 sure they're very well aware of what the
5 issues are, and what they think is -- what the
6 outcome should be.

7 Okay. This is the final one:
8 Ides of March, 15 March. I'm doing that
9 solely as a compromise. I think that April
10 1st is reasonable, but the Bureau has a public
11 interest in the disposition of this case.

12 MR. SCHONMAN: 16 March is Monday.

13 JUDGE SIPPEL: Well, let's start
14 on Monday, the 16th. No, I'm going to start
15 it on Tuesday, the 17th. I think witnesses
16 have to get into town over the weekend, and
17 they have to get a chance to talk to the
18 lawyers. That's one day, so we're going to do
19 at 17 March. If that Tuesday had been the
20 15th of March, I would have set it down for
21 the 15th. Now, the next question is the close
22 of discovery. Since that's 17 March, we're

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1 going to have to close discovery down at
2 February 20. That means there's nothing more
3 to do for discovery.

4 Okay. Now, you say 10 requests
5 for documents. Those should go out tomorrow.
6 You can use -- no?

7 MR. COHEN: Your Honor, I know the
8 Media Bureau -

9 (Simultaneous speech.)

10 MR. COHEN: We understand the time
11 frame, we will get them out next week.

12 JUDGE SIPPEL: And does the other
13 side agree to expedite on that? I mean,
14 obviously -

15 MR. LEVY: Of course.

16 JUDGE SIPPEL: We're not talking
17 about privileged documents, attorney/client
18 privilege, and that type of thing. I'll
19 review those in camera if I have to, but let's
20 not do that, please.

21 MR. LEVY: We will be prepared to
22 expedite our responses, and we will also get

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1 out our request next week, if we have
2 requests.

3 JUDGE SIPPEL: I hear you. All
4 right. This should be -

5 MR. MILLS: Is that December 5th,
6 Your Honor, for discovery out by?

7 JUDGE SIPPEL: 20 February. End
8 of discovery by 20 -

9 MR. MILLS: No, no, the document
10 requests.

11 JUDGE SIPPEL: Served on. Well,
12 you give me a date. I mean, if it's going to
13 be next week, you give me the date you're
14 comfortable with.

15 MR. COHEN: December 5, Your
16 Honor. We're all comfortable with that.

17 JUDGE SIPPEL: 5 December?

18 MR. COHEN: Yes. And the parties
19 will talk about our protective order between
20 now and then.

21 JUDGE SIPPEL: Right. Well, you
22 can submit that at any time. You can collect

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1 the documents and sit on them until you sign
2 a protective order.

3 MR. COHEN: Harder to serve ten,
4 Your Honor, than more.

5 JUDGE SIPPEL: Sir?

6 MR. COHEN: Harder to serve ten
7 requests than more actually.

8 JUDGE SIPPEL: Well, there you go.
9 Well, you need more time to think about it.
10 You're exactly right. I intend to on these
11 proposed findings and conclusions, as far as
12 I'm concerned, it's going to be the normal
13 time frame on that. I don't have -- let me
14 see, what is it, 20 days? I usually go 30 and
15 20, but I'll do whatever the rules provide on
16 that. And I'm going to -- as an option, so
17 that it might help move it along, as an option
18 to any party that wants to submit a proposed
19 decision, a proposed - what is this called -
20 a recommended decision along with their
21 proposed findings, that's fine with me.
22 Anything that will make my job -- possibly

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1 make my job easier.

2 MR. SOLOMON: Your Honor, can I
3 ask you a question about the proposed
4 findings?

5 JUDGE SIPPEL: Yes, sir.

6 MR. SOLOMON: Would those be at
7 the conclusion of each case, or all at the end
8 of all the cases?

9 JUDGE SIPPEL: Well, I really
10 hadn't thought that through. I don't think
11 that there's a reason as to why it should be -
12 well, the earlier I can get it and look at
13 it, the better it is. So I don't see why
14 anybody who's completed their case and rested
15 it, why I shouldn't start counting it from
16 that point on. Well, I've got to count in, of
17 course, the availability of the transcripts.
18 Are you all going to get expedited transcripts
19 on this?

20 (Chorus of yeses.)

21 MR. SOLOMON: So X days from the
22 close of the record in that part of the case.

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1 JUDGE SIPPEL: Whatever, yes, yes.
2 I don't see why not, because the sooner I get
3 them -- if I get them staggered it's better,
4 my life is better.

5 MR. BECKNER: Is it your intention
6 in the hearing to, in effect, have sort of
7 serially an NFL, and I'll just pick the order,
8 an NFL hearing, a MASN hearing, and a Wealth
9 hearing, one after the other?

10 JUDGE SIPPEL: Yes. At this
11 point, because of -- I mean, I'm just coming
12 to this case. I know about the case. The
13 case has been in the office, and I'm aware of
14 the broad span of the case. But my point is
15 that you all are in the best position in terms
16 of lining up how these cases can most
17 expeditiously be heard, and I don't want to
18 hear -- I don't want attorneys in the
19 courtroom who don't need to be here. That's
20 all. Do you have any -- now, you all may have
21 different thoughts. I'd look to the Bureau
22 now, Mr. Schonman or Ms. Monteith. Do you

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1 have any strong feelings for that one way or
2 the other?

3 MR. SCHONMAN: Just one minute,
4 Your Honor. Your Honor, we have no opinion
5 one way or the other.

6 JUDGE SIPPEL: Thank you. So I'm
7 going to leave that up to you all. I'll put
8 a date certain in the order. And, by the way,
9 my -- with the series of illnesses in the
10 office, I won't have my order out until
11 Monday, but you all know what I'm talking
12 about. And I will get an order out certainly
13 the first of next week, and I will state in
14 there what -- no, I'm sorry. Let me back up
15 on that.

16 I want the parties to give to me
17 what basically what the order of proof will be
18 with respect to parties. In other words, who
19 is going to go first, and whether it's going
20 to be segmented from the other cases, or can
21 be. I think you -- obviously, you're the ones
22 that are in a position to do that, and it's in

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1 everybody's interest to do it, because it's
2 going to make it better. It's going to make
3 it faster, more expeditious.

4 MR. LEVY: We will consult on
5 that, Your Honor, as the date gets closer.
6 Unless you think that's a very high priority
7 for now, there may be changed circumstances
8 between now and then that would affect the
9 outcome, as we see how much evidence there is,
10 and how many experts each party has.

11 JUDGE SIPPEL: Well, there's
12 always a caveat to anything that happens in a
13 trial. And, certainly, if there's cause shown
14 as to why something should be changed or
15 modified, I'm open to listening to that. But
16 I'd like to go into this case understanding,
17 and we have -- Ms. Gosse is here. We're going
18 to have a lot of logistical work to do on our
19 own end, and we do not have an unlimited
20 staff.

21 MR. MILLS: Your Honor, I have one
22 other thing. I assume your order is going to

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1 set forth in advance of the hearing when the
2 witness lists and summaries -

3 JUDGE SIPPEL: Oh, yes, you'll
4 have all of it.

5 MR. MILLS: -- trial briefs, and
6 all that.

7 JUDGE SIPPEL: Yes, sur.

8 MR. MILLS: But I also would ask
9 that we get -- we have some form of expert
10 disclosures and reports so that we get -- the
11 WealthTV case, get the plaintiff's expert
12 reports in advance of when we submit our's so
13 that we know what our experts are going to be
14 addressing. This is not just on remedy, it's
15 on both parts of the case. And we would ask
16 that that be staggered so that our experts
17 know what to address. I think that would be
18 much more efficient.

19 JUDGE SIPPEL: Well, that's a good
20 point. As I said before starting out on this,
21 FRCP 26.B, some subsection in there, in terms
22 of the discovery you're going to get.

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1 MR. MILLS: We just need dates in
2 the order for the -

3 JUDGE SIPPEL: But you need the
4 dates in the order in terms of when.

5 MR. MILLS: Right.

6 JUDGE SIPPEL: And is that -- now,
7 who wants the priority on that? In other
8 words -

9 MR. MILLS: Well, the plaintiffs
10 have the burden. They should submit their
11 expert's report first, and then we should have
12 some period of time before we submit our's.

13 JUDGE SIPPEL: Or even decide
14 whether or not you need it.

15 MR. MILLS: Right. And then
16 depositions of those all have to -- has to
17 happen early enough so that we can take
18 depositions -

19 JUDGE SIPPEL: Sure.

20 MR. LEVY: Before February 20th.

21 JUDGE SIPPEL: Sure. I mean, the
22 statements under Rule 26, I mean, those are

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1 pretty straightforward. And once that's in
2 your hands, you should be able to set up for
3 deposition, but you've got your own expert
4 telling you how silly it is, or something, you
5 can ask the questions. Is that okay?

6 MR. LEVY: Yes, that makes sense.

7 JUDGE SIPPEL: All right. Is
8 there anything else?

9 MR. SCHONMAN: Yes, Your Honor.

10 JUDGE SIPPEL: And that would be?

11 MR. SCHONMAN: Earlier we had
12 discussed at length whether direct testimony
13 should be in writing or live, and I'm not sure
14 that we resolved that matter.

15 JUDGE SIPPEL: We haven't resolved
16 it yet. I'm inclined - as I said, my
17 inclination is, I don't see -- first of all,
18 I'm not convinced that I have the power, the
19 authority to deny somebody the right to bring
20 in a live witness. I understand that if
21 everybody agrees to it, I certainly would
22 order it, and I'm encouraging it. But, on the

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1 other hand, as I said, Comcast and the
2 defendant parties, that they could put on
3 their case as they see fit. As long as it
4 doesn't delay.

5 MR. SCHONMAN: Well, the Bureau
6 believes that direct written testimony would
7 be the most expeditious manner of proceeding
8 this case. And I think the rules do
9 contemplate that, so I -

10 JUDGE SIPPEL: Well, I'll take a
11 look at it, and you take a look at it. I
12 would go -- I agree with you that it would be
13 the most expeditious way, and generally it's
14 the easiest and quickest way. On the other
15 hand, if a good - I hate to say that this way
16 - but if a witness is really prepped, and the
17 lawyer has had a second cup of coffee, or her
18 - whatever it might be, you can put that
19 direct testimony on very quickly. In fact, if
20 you put it on too long, you're doing your --
21 boy, I'll tell you, you put on a case, direct
22 case without a witness in two minutes, it's

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1 going to take two days to cross examine that
2 witness because the witness hasn't said
3 anything. So I -- the time frame, I think
4 you're thinking of it in a different context
5 of a case that's going to be tried. This is
6 not comparative case, or something like that.

7 MS. WALLMAN: Your Honor.

8 JUDGE SIPPEL: All right. I'm
9 sorry.

10 MS. WALLMAN: One more thing, if I
11 may.

12 JUDGE SIPPEL: Yes.

13 MS. WALLMAN: On the exchange of
14 expert witness reports, I read Judge
15 Steinberg's initial scheduling order, I
16 thought as contemplating simultaneous
17 exchange. The staggered exchange is fine with
18 WealthTV as long as there's an opportunity for
19 us to present rebuttal, if need be, after
20 that.

21 JUDGE SIPPEL: Well, I'm in a
22 situation where -- I think that's -- let me

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